

**JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

CIVIL ACTION NO: JP17-18-002988

CASE EDWARDS MANAGEMENT INC VS KATHY BUGIEDA

ORDER ON TRIAL DE NOVO

The Court has entered a judgment or order in the following form:

Case Edwards Management, Inc. filed this action against the Defendant, Kathy Bugieda, on May 9, 2018, seeking possession of a federally subsidized rental unit, located at 1004 Dunbarton Apartments, Georgetown, for material lease violations and non-renewal of lease for good cause. A trial before a single judge occurred on May 24, 2018 and a decision was issued on June 5, 2018 in favor of the Plaintiff.

Defendant appealed in a timely manner and a three-judge panel heard the case as a Trial de Novo on June 19, 2018. The panel consisted of Chief Magistrate Alan Davis, Judge Richard D. Comly and Judge Deborah Keenan. This is the Court's opinion after trial.

FACTS

Michael Picarello, Code Enforcement Officer for the Town of Georgetown, appeared as witness for the Plaintiff and testified that, after receiving a police initiated complaint, he inspected the Defendant's unit on October 14, 2017. He observed minor problems, including roaches, a faulty smoke detector, broken dishwasher, and the odor of cat urine. The issues were addressed and the case was closed. On January 3, 2018, Betsy Wooten, Property Manager of Dunbarton Apartments, asked Mr. Picarello to accompany her on a regular inspection. When Mr. Picarello and Ms. Wooten arrived at the Defendant's apartment, the Defendant did not allow entry for inspection and was upset, stating that she felt she was being singled out. The Defendant did allow entry on February 13. Mr. Picarello stated that an odor of cat urine remained, in addition to the smell of incense, and there were roaches on the wall.

Betsy Wooten testified for the Plaintiff that the Defendant had been a tenant at Dunbarton Oaks since 2008 and that all units are inspected quarterly. In December 2017, an inspection was attempted, but the Defendant refused entry. The inspection was rescheduled for January 3. Entry was again refused and the Defendant was verbally abusive to the inspectors. On January 12 a "Notice of Material Non-compliance" was sent to the Defendant alleging violations of the Community Rules and Regulations (defendant's verbal abuse of Ms. Wooten and failure to allow entry for pest control and unit inspections), violation of the Lease Agreement (refusal to allow management to inspect premises with notice), violation of the Delaware Landlord Tenant Code (breach of rules and neglect). Defendant was

given ten (10) days to “follow the community rules and regulations and lease agreement and comply with regularly scheduled inspections,” or her continued non-compliance would lead to lease termination. The letter included notice that the defendant had a right to respond and had a right to a hearing in accordance with HUD regulations. When Ms. Wooten arrived for the scheduled inspection on January 22, the last day for compliance, no one answered the door. In February, access to the unit was gained, due to an interim court order on another case. At that time there was clutter, broken items, roaches and a strong ammonia smell. A 60-day notice of lease termination, dated February 26, 2018, was sent to the Defendant citing repeated violations of the pet policy, interference with pest control service, refusal to permit or interference with inspections changing locks or obstructed entrance, and lack of cleanliness

Kathy Bugieda, Defendant, testified that she had never had a problem with previous managers. She stated that she feels she is being retaliated against because she was injured in a fall in January 2015, and there is a pending lawsuit against Dunbarton Apartments. The Defendant further stated that her apartment is being targeted for inspections. Although she has been complaining about the dishwasher for five years, a new one was just put in this month. There are other issues, including doors and windows frozen over, a hole in the carpet, a crack in the counter and plaster missing from the kitchen wall, that have never been addressed. Ms. Bugieda sent several letters to management waiving inspections and requesting new dates, however there were no requests for hearings.

Ms. Wooten was recalled and testified that work orders are prioritized by the maintenance staff. Maintenance did enter the apartment in September, 2017 to address the dishwasher issue, but had to leave because of the ammonia smell in the apartment. A new dishwasher was eventually installed. Several completed work orders were entered into evidence.

ARGUMENTS

The Plaintiff’s representative referred the court to the HUD Occupancy Handbook, Chapter 8, Section 3: “Termination of Tenancy by Owners” which addresses allowable circumstances for terminating tenancy including repeated minor violations. The Plaintiff was given multiple opportunities to cure these minor violations. Additionally, “Procedures for Terminating Tenancy and Providing Notice” were followed, in accordance with HUD regulations and the Delaware Code.

The Defendant argued that she had been at Dunbarton Oaks Apartments for 17 years. She tried to follow the rules and regulations, but, because of health problems, is having trouble keeping her apartment the way she had in the past. Additionally, she feels that she is targeted due to a pending lawsuit.

DISCUSSION

The Defendant was given notice to cure multiple violations. Understanding that there may have been hardships, the Defendant could have requested a hearing after receiving each letter, however she did not. The Defendant’s claims of harassment and retaliation are without merit.

ORDER

Accordingly, judgment for possession of the rental unit is granted to the Plaintiff, Case Edwards Management Inc., D/B/A Dunbarton Oaks Apartments II. A judgment for court costs of \$60.00 is entered against the Defendant, Kathy Bugieda. Post-judgment interest shall accrue at the legal rate of 7.5% annually.

IT IS SO ORDERED 13th day of July, 2018



Deborah J. Keenan

Justice of the Peace

(SEAL)

Information on post-judgment procedures for default judgment on Trial De Novo is found in the attached sheet entitled Justice of the Peace Courts Civil Post-Judgment Procedures Three Judge Panel (J.P. Civ. Form No. 14A3J).